

Memorandum

Date : July 19, 2001

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To : **Metcalf Energy Center Siting Committee:**

Robert A. Laurie, Presiding Member

William J. Keese, Associate Member

File:S/projects/metcalf/pmpdcomments.doc

From : **California Energy Commission** - Paul Richins, Jr, Energy Facilities Licensing Program Manager
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Subject : **Comments on the Presiding Member's Proposed Decision for the Metcalf Energy Center--99-AFC-3**

On June 18, 2001, the Presiding Member's Proposed Decision (PMPD) for the Metcalf Energy Center was released. The Notice of Availability directed interested parties, governmental agencies and members of the public to file written comments by July 19, 2001. As directed, staff has not restated legal arguments previously made during the hearings and in briefs. Staff respectfully submits the following comments:

Transmission System Engineering

- On page 79, the phrase "mega-volt-amps" should be "megavoltamperes."
- On page 79, the first sentence in the last paragraph should read "PG&E has conducted the required Detailed Facilities Study and ...".
- On page 81, #5 should read: "The determinations of the California Independent System Operator are based on its review of the Detailed Facilities Study, the Supplemental Studies, and other analyses ...".

Local System Effects

- On page 91, #3 of the third full paragraph should state:"3) reduction in number of outage cases in which the load flow modeling could not converge to a solution."
- On page 92, in the first sentence of the very last paragraph, replace "Voltage collapse involves" with "Voltage collapse analysis studies".
- On page 99, #3, 240 MW is 9% of 2700 MW (not 14%).

Air Quality

- On page 134, Air Quality Table 8, Folgers Coffee is located south of San Francisco and not in San Jose. The oral testimony in the hearing corrected this error.

- On page 137, number 7 states that BACT for CO is 10 ppmvd averaged over three hours. BACT limit for CO should be corrected to show 6 ppm averaged over three hours as reflected in AQ-20 (d) on page 146.
- On page 138, number 10, the Applicant is to install a CO catalyst. According to the Applicant's testimony, as a result, the PM10 emissions will increase by 2 Lb/hour, or 16 tons/year. The Applicant will need to secure additional 16.7 tons of PM10 offsets to fully mitigate the project's emissions.
- On page 138, number 11 states "all project offsets are located in San Jose and Mountain View." This is true except for the offsets obtained from Folgers Coffee Source.
- Condition AQ-52 should be replaced with the following condition. The updated condition of certification provides the project owner additional flexibility so that mitigation may be achieved through use of ultra low sulfur diesel fuel in addition to installing oxidation catalysts.

AQ-52 The project owner shall employ the following measures to mitigate, to the extent practical, construction related emission impacts from off-road, diesel fired construction equipment. These measures may include the use of oxidizing soot filters, oxidizing catalysts, diesel fuel certified to CARB ultra low sulfur fuel standards (sulfur content less than 15 ppm) and diesel engines that are either equipped with high pressure fuel injection, employ fuel injection timing retardation or are certified to EPA and CARB 1996 or better off-road equipment emission standards. Additionally, the project owner shall restrict idle time, to the extent practical, to no more than 5 minutes.

The use of each mitigation measure is to be determined by a qualified individual (QI). The QI is to be approved by the CPM prior to the submission of any reports. The QI will determine the mitigation measures to be used within the following framework.

Construction Mitigation Framework

1. No measure or combination of measures shall be allowed to significantly delay the project construction or construction of related linear facilities nor shall they be allowed to cause significant damage to the construction equipment or cause a significant risk to on site workers or the public.
2. Engines certified to EPA and CARB 1996 or better off-road equipment emission standards **and** CARB certified ultra low sulfur diesel fuel may be used in lieu of oxidizing soot filters and oxidizing catalysts.

The QI, in consultation with the California Air Resources Board (CARB), will submit the following reports to the CPM for approval either hard copy or electronically:

- Construction Mitigation Plan

- Reports of Change and Mitigation Implementation
- Emergency Termination of Mitigation Reports, as necessary

Construction Mitigation Plan:

The Construction Mitigation Plan shall be submitted to the CPM for approval prior to rough grading on the project site and will include:

1. A list of all diesel fuel burning, off-road, stationary or portable construction-related equipment to be used either on the project construction site or the construction sites of the related linear facilities.
2. All equipment listed under (1), shall be identified as either using engines certified to EPA and CARB 1996 or better off-road equipment emission standards, using diesel engines that are equipped with high pressure fuel injection, or using diesel engines that employ fuel injection timing retardation.
3. The determination of the suitability of all equipment listed under (1) to work appropriately with an oxidizing catalyst shall be identified except as provided for in item 2 of the **Construction Mitigation Framework** above. If a piece of equipment is determined to be unsuitable for an oxidizing catalyst, the QI will provide an explanation as to the cause of this determination.
4. The determination of the suitability of all equipment listed under (1) to work appropriately with an oxidizing soot filter shall be identified except as provided for in item 2 of the **Construction Mitigation Framework** above. If a piece of equipment is determined to be unsuitable for an oxidizing-soot filter, the QI will provide an explanation as to the cause of this determination.
5. Maximum idle times shall be identified for all equipment listed under (1).
6. The sulfur content of all diesel fuel to be burned in any equipment listed under (1) shall be identified.

Report of Change and Mitigation Implementation

The QI shall submit a Report of Change and Mitigation Implementation for approval to the CPM following the initiation of construction activities which contains at a minimum the cause of any deviation from the Construction Mitigation Plan, and verification of the Construction Mitigation Plan measures that were implemented. Verification includes, but is not limited to, the following:

1. EPA or CARB engine certifications for item 2 of the **Construction Mitigation Plan**.
2. A copy of the contract agreement requiring subcontractors to comply with the elements under item 2 of the **Construction Mitigation Plan**.
3. Confirmation of the installation of either oxidizing catalysts or oxidizing soot filters as identified in items 3 and 4 of the **Construction Mitigation Plan** or the cause preventing the identified installations.

4. A copy of the contract agreement requiring subcontractors to comply with the elements under item 5 of the **Construction Mitigation Plan**.
5. A copy of receipts of purchase of diesel fuel indicating the sulfur content as identified in item 6 of the **Construction Mitigation Plan**.

Emergency Termination of Mitigation Report

If a specific mitigation measure is determined to be detrimental to a piece of construction equipment or is determined to be causing significant delays in the construction schedule of the project or the associated linear facilities, the mitigation measure may be terminated immediately. However, notification must be sent to the CPM for approval containing an explanation for the cause of the termination. All such causes are restricted to one of the following justifications and must be identified in any Emergency Termination of Mitigation Report.

1. The measure is excessively reducing normal availability of the construction equipment due to increased downtime for maintenance, and/or power output due to an excessive increase in back pressure.
2. The measure is causing or reasonably expected to cause significant damage to the construction equipment engine.
3. The measure is causing or reasonably expected to cause a significant risk to nearby workers or the public.
4. Any other seriously detrimental cause which has approval by the CPM prior to the change being implemented.

Verification: The project owner will submit to the CPM for approval the qualifications of the QI at least 45 days prior to the due date for the Construction Mitigation Plan. The project owner will submit the Construction Mitigation Plan to the CPM for approval 30 calendar days prior to rough grading on the project site. The project owner will submit the Report of Change and Mitigation Implementation to the CPM for approval no later than 10 working days following the use of the specific construction equipment on either the project site or the associated linear facilities. The project owner will submit any Emergency Termination of Mitigation Reports to the CPM for approval, as required, no later than 10 working days following the termination of the identified mitigation measure. The CPM will monitor the approval of all reports submitted by the project owner in consultation with CARB, limiting the review time for any one report to no more than 20 working days.

- On page 147, AQ-24 should read as follows:
AQ-24 Total combined emissions from the Gas Turbines and HRSGs (S-1, S-2, S-3, and S-4), including emissions generated from the cooling tower and during Gas Turbine start-ups and shutdowns shall not exceed the following limits during any calendar day:

- | | | |
|-----|---|--------|
| (a) | 1,362.6 pounds of NO _x (as NO ₂) per day | (CEQA) |
| (b) | 7,891.1 pounds of CO per day | (PSD) |
| (c) | 230.2 pounds of POC (as CH ₄) per day | (CEQA) |
| (d) | 540 <u>571.4</u> pounds of PM ₁₀ per day | (PSD) |
| (e) | 57.9 pounds of SO ₂ per day | (BACT) |

- On page 147, AQ-25, the PM₁₀ level in AQ-25 (d) should be changed to 108 tons of PM₁₀ per year instead of 91.3 tons per year to reflect the installation of the CO catalyst.

Note: Air Quality Table 8 of the PMPD shows that the Applicant has sufficient offsets of 37.52 tons per year of VOC emissions at the Quebecor facility to provide the required mitigation for PM₁₀ emissions. The net increase will be 16.7 tons per year of PM₁₀ emissions with the installation of the CO catalyst. By providing VOC emissions at 2:1 from Quebecor Facility, the Applicant needs to surrender an additional 33.4 tons per year of VOC to fully mitigate the net PM₁₀ increases.

- On page 164, AQ-51, Folgers Coffee source is located in south of San Francisco and not in San Jose.

Public Health

- On page 169, the last sentence of the first full paragraph should read "Staff considers a potential cancer risk of ten in one million as the level of significance."
- On page 174, the last sentence of the first full paragraph should read "Cancer risk was calculated as 0.20 in one million, well below the significance level of ten in one million."
- In response to the PMPD's request for Staff comments on AQ-23, Staff does not believe that changes to the condition are necessary.

Waste Management

- On page 219, staff proposes the following changes to Condition of Certification WASTE-4 to maintain consistency with other siting cases in progress based on comments from the Department of Toxic Substances Control:

WASTE-4 The project owner shall have a Registered Professional Engineer or Geologist, with experience in remedial investigation and feasibility studies, available for consultation during soil excavation and grading activities. The Registered Professional Engineer or Geologist shall be given full authority to oversee any earth moving activities that have the potential to disturb contaminated soil.

Verification: At least 30 days prior to the start of construction, the project owner shall submit the qualifications and experience of the Registered Professional Engineer or Geologist to the CPM for approval.

Biological Resources

- On page 251, Section E, Bio-7, Line 1 of verification presently reads: no less than *fifteen (15) days* prior to the start of any project *related ground disturbance activities*. Change to: no less than *thirty days* prior to the start of any *streambed alteration disturbances*, including horizontal directional drilling, ...
- On page 251, Section G, Bio-9, Line 1 of condition reads: Prior to the start of any *ground disturbance activities*. Change to: Prior to the start of any *streambed alteration activities, including horizontal directional drilling...*
- On page 251, Section G, Bio-9, lines 1 and 2 of verification reads: At least thirty days prior to the start of any *project related ground disturbance activities*. Change to: At least thirty days prior to the start of any *streambed alteration activities, including horizontal directional drilling, ...*

Soil and Water Resources

- On page 267, top of the page: Correction and clarification is required. The PMPD states: "the evidence further indicates that there is no significant difference in groundwater impacts when also considering the operation of the proposed Coyote Valley Research Park since the SCVWD has identified in its Integrated Water Resource Plans various measures to appropriately manage the water basin." This statement suggests that MEC will have only a negligible cumulative impact on groundwater when considered with CVRP. This is incorrect. Staff's analysis clearly showed that, unlike the impacts of MEC operating alone, the cumulative impacts on the Coyote Valley Subbasin from the operation of MEC and CVRP would cause a significant adverse impact. Staff did not recommend any mitigation of this impact by MEC because the SCVWD's plans call for measures that could mitigate these impacts and the district agreed to implement these measures. Therefore, the correct characterization of the proposed project's cumulative groundwater impacts is significant adverse mitigable impact.
- On page 267, second paragraph: Clarification of LORS compliance is required. Use of reclaimed water by MEC would also be consistent with the intent of Water Resource Code section 13550 et seq.
- On page 277, Finding #36: Correction is required. Staff analysis showed the proposed project would have a cumulative significant adverse groundwater impact that can be mitigated by SCVWD implementation of certain measures identified in their IWRP.

Land Use

- On page 317, second paragraph, last sentence:
The Committee cites Staff's agreement on the witness stand with a hypothetical question posed by Commissioner Laurie that a piece of land designated as "prime soil" would not be suitable for agriculture in all circumstances. The example

Commissioner Laurie used to illustrate his point at the evidentiary hearing was a 10-acre piece of farmland surrounded by a 90-acre residential subdivision (1/31/01 RT 143-144). This example does not reflect the circumstances in this case and quoting Staff's agreement to a hypothetical statement is a mischaracterization of Staff's testimony. A site such as the MEC, which is partially being used for agriculture and is surrounded primarily by other agricultural uses, is viable for agriculture and meets the County's threshold for significant impacts (Ex. 7, p. 220). No Campus Industrial uses have been built in North Coyote Valley since the General Plan was amended in 1983, and the area, including the project site, remains rural and has continued to be farmed (Ex. 7, p. 208).

- On page 318, second paragraph, third sentence:

The PMPD refers to Applicant's argument that the MEC site does not meet the Department of Conservation's criteria for prime farmland. Applicant testified that the site would not qualify as prime farmland because it is not irrigated (1/31/01 RT 53). The PMPD does not mention the sworn testimony of Applicant's witness under cross-examination that the southern 10 acres of the site "would be considered prime farmland because it is irrigated, and it is actively farmed, and it would be a suitable candidate for prime farmland inclusion" (1/31/01 RT 73).

- On page 318, third paragraph, second sentence:

The Committee states that "Even if the 20-acre MEC site met the criteria for prime farmland under any of the proffered definitions, the small number of converted acres would not constitute a significant environmental impact given the surrounding urban development and Campus Industrial designation." The site meets the criteria for prime farmland. The site is: designated prime farmland on the most recent Important Farmland Map for Santa Clara County; comprised of prime soil mapping units; and half of the site is currently irrigated (Ex. 7, pp. 195, 219-220; 1/31/01 RT 73, 129). Staff acknowledges that the 20-acre MEC site is a small percentage of the acreage designated as prime farmland in the County (Ex. 7, pp. 695-696). However, Staff relied on significance thresholds utilized by the County and City to assess whether the project's conversion of prime farmland would be a significant impact (Ex 7, pp. 219-220; 695-696; 1/31/01 RT 130-131). The project would convert prime farmland that exceeds the level of significance established by the City and County. The PMPD incorrectly states that the project site is surrounded by urban development. The site is bordered to the south by agricultural property and the project area is primarily agricultural (Ex. 7, pp. 195, 219, and 220). The PMPD acknowledges this later on, stating that "agricultural uses predominate the area" (page 328). Furthermore, while the site is designated Campus Industrial on the General Plan Land Use Diagram, half of it is currently farmed, as is much of Coyote Valley (Ex. 7, p. 219).

- On page 318, third paragraph, 4th sentence:

The following statement is a mischaracterization of Staff's written testimony: "Furthermore, Staff acknowledges that the project parcel would likely be converted to other uses in any event, and that non-development of the present project would result in only a deferral of that conversion." The PMPD is referring to Staff's alternatives analysis, which actually states that Staff is "not certain if and when the [MEC] site would be developed if the project is not approved" (Ex. 7, p. 764).

Applicant offered several reasons why they believe the site is not suitable for campus industrial development, has not been purchased by other developers, and has remained undeveloped since the 1983 General Plan amendment (Ex. 10, p. 15).

- On page 322, second paragraph: In regard to the Committee's request for clarification on the project's remaining inconsistencies with land use-related LORS, see the attached table.
- Page 330, Finding #8: The PMPD states that "Conversion of the project site from agricultural uses would likely occur whether or not the MEC were constructed." If the MEC is not approved, the site could remain in agricultural use for an indefinite period of time (Ex. 7, p. 220)
- On page 330, Finding #9:

The PMPD states that the MEC would not result in significant adverse impacts to agriculture since it represents a small percentage of the 1,440-acre campus industrial area and the impact was already contemplated in the Master Development Plan. The Committee ignores the thresholds of significance utilized by the County and City (Ex. 7, pp. 219-220). Furthermore, if the impact has already been accounted for in the approval of the Master Development Plan, and, as Applicant argues, the loss of prime farmland in North Coyote Valley occurred in 1985, then the City would not have found in the EIR for the CVRP project that the project would cause a significant impact to prime farmland in 2000 and then made overriding considerations for this impact to approve the CVRP project. (1/31/01 RT 131-132)
- Page 330, Finding #13:

The PMPD states that "The MEC is not currently compatible with existing and planned land uses." This statement would appear to contradict the discussion on page 328 where the PMPD states that "We are persuaded by the weight of the evidence that the project is compatible with adjacent land uses, especially given its isolated location and less than significant environmental effects." The Committee should resolve the inconsistency between the two statements. If, by stating that the project is not "currently" compatible, the Committee is suggesting that compatibility could be achieved by changing the site's current land use designation, the Committee should refer to the City's testimony cited in the PMPD. According to the PMPD (page 328), the City's witness testified that land use compatibility is "not really determined by a land use designation but by actual land uses." In other words, the compatibility of dissimilar land uses can not be ascertained merely by a designation on a map, but by an evaluation of the potential effects that these uses could have on one another. The PMPD should make it clear whether it finds the MEC compatible with existing (e.g., rural residential) and planned land uses (i.e., campus industrial uses; e.g., the CVRP project).
- On page 330, Finding #14: The Committee should insert after the 1st bullet that the project is inconsistent with General Plan Riparian Corridor Policy #2 that "new public and private development adjacent to riparian corridors should be consistent with the provisions of the Riparian Corridor Policy Study." The project is inconsistent with guidelines 1A and 2F of the Riparian Corridor Policy Study (Ex. 7, pp. 214-215).

Conditions of Certification:

- On page 332, **LAND-2**: In the first sentence of the verification, please insert the words “for approval” after “CPM.”
- **LAND-3**: Make the following revisions: Page 332, Strike the reference to the Chief Building Official (CBO) in the second sentence of the fourth paragraph of the condition. These types of activities are generally not the responsibility of the CBO. On page 333, Revise the first sentence of the verification as follows: At least sixty (60) days prior to the start of construction, the project owner shall submit the final design plans to the City of San Jose for review and comment and to the CPM for approval.
- On page 333, **LAND-4**: revise the first sentence of the verification as follows: “...the project owner shall submit to the City for review and comment and to the CPM for approval a site plan...”
- On page 336, **LAND-11**: Make the following revisions:
 - * Strike all references to the CBO in all parts of the condition.
 - * Revise the first sentence of the protocol as follows: “The project owner shall submit to the CPM final design specifications demonstrating that the HRSG stacks will be limited to the specified height.
 - * Revise the first sentence of the verification as follows: At least sixty (60) days prior to the start of construction, the project owner shall submit final design specifications to the CPM for review and approval.
 - * Strike completely the last two sentences of the verification.

Visual Resources

- On page 358, first full paragraph, line 4: “ability” should be changed to “inability.”
- On page 369: lines 14-16: The PMDP states that “the evidence shows that the transformation of the area’s present character (and any associated cumulative visual impact) will occur with or without the MEC.” The evidence shows that the transformation of the area is likely to occur with or without MEC. Although the City has approved the CISCO project, it is uncertain when and if it will be built.
- On page 379, Finding 7, line 2: “if built “ should be inserted before “will transform.”
- On page 379, Finding 8, line 2: “will occur” should be changed to “is likely to occur”.
- On page 390, Condition VIS-10, second and third sentences add the underlined wording: “To accomplish these objectives, the power plant shall be designed and operated to minimize visible plumes. The power plant shall be designed and operated to meet the following plume abatement standards:” These changes are needed to be consistent with the wording in the rest of the condition.
- On page 391, Condition VIS-11, line 1: for clarity, add the underlined wording: “If a trail is built along Fisher Creek between Blanchard Road and the railroad tracks, in consultation with the City of San Jose and Santa Clara County”.

- On page 392, Condition VIS-12, Verification: To ensure compliance with the condition, the following language should be added to the end of the Verification: "The project owner shall notify the CPM when any measures developed with a property owner have been implemented and are ready for inspection."

Noise

- On pages 407-408, Condition of Certification NOISE-5: the third paragraph, third line, after "project of any noise," delete the comma after "noise" and add the words "condition of certification".
- On pages 407-408, Condition of Certification NOISE-5: In the fourth line of the Verification, after "certification that" add the words "the sound-rated windows and air conditioning have been installed in affected receptors, and".

Alternatives

- On page 436, second paragraph, please revise the second sentence as follows:
"Even though the Commission is exempt from having to produce an environmental impact report (EIR), this inquiry must also comply withis guided by the California Environmental Quality Act (CEQA) Guidelines for an EIR which ~~require~~ must contain an evaluation of the comparative merits of a range of reasonable alternatives to the project, or to its location, which would feasibly attain most of the project's basic objectives but would avoid or substantially lessen any of the significant adverse effects of the project.
- On page 437, paragraph 2, delete lines 1-5, and replace with a more complete explanation as follows:
The decisionmakers determine if the project is fully mitigated. If there is one or more unmitigated significant adverse impacts, the decisionmakers may not approve the project unless they find that there are no feasible mitigation measures or feasible alternatives and that the project's benefits outweigh the unmitigated impacts.

At the project approval stage, the decisionmakers can make one of three decisions:

1) approve the project because it is fully mitigated, 2) approve the project even though it has one or more unmitigated significant adverse impacts because there are no feasible mitigation measures or feasible alternatives that mitigate or avoid the impact(s) and there are overriding considerations, or 3) deny the project because it has one or more unmitigated significant adverse impact.

- On page 445, in the second full sentence of the first paragraph should read that the interconnection of the MEC "could" result in an additional cost of up to \$42 million.
- On page 446, in the last sentence of paragraph 2, change "would" to "could".
- On page 448, second paragraph, replace the last sentence with the following: "Staff opined that the no project alternative would only prevent the creation of what it considers adverse impacts in the context of visual resources and land use considerations. We have determined, however, that all impacts of the MEC would be mitigated to below levels of significance."